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Supreme Court of the United States

OCTOBER TERM, 1946

Nos. 759 and 760

UNITED STATES OF AMERICA

vs.

UNITED MINE WORKERS OF AMERICA

and

JOHN L. LEWIS, individually and as President, United Mine Workers of America

Nos. 781, 782 and 811

UNITED MINE WORKERS OF AMERICA

and

JOHN L. LEWIS, individually and as President, United Mine Workers of America

vs.

UNITED STATES OF AMERICA

MOTION FOR LEAVE TO FILE BRIEF AS *AMICUS CURIAE* AND BRIEF OF THE WORKERS DEFENSE LEAGUE, *AMICUS CURIAE*

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MOTION FOR LEAVE TO FILE BRIEF AS *AMICUS CURIAE*

To the Honorable the Supreme Court of the United States:

The undersigned, as counsel for the Workers Defense League, respectfully moves this Honorable Court for leave to file the accompanying brief as *Amicus Curiae*. The consent of the attorneys for the parties to the filing of this brief has been obtained.

Special reasons in support of this motion are set out in the accompanying brief.

George Moscowitz,
Attorney for the Workers Defense League, Amicus Curiae.

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BRIEF OF THE WORKERS DEFENSE LEAGUE, *AMICUS CURIAE*

Statement and Motion

The Workers Defense League is a nation-wide organization devoted to the protection of the democratic rights of

working people of the United States. All the work of the League is done on a completely non-partisan basis, and its efforts are devoted to helping those whose democratic rights are being abrogated, regardless of race, creed or color. On this basis and because of the great national importance of the issues herein, the League respectfully requests leave of this Honorable Court to appear as *amicus curiae* and be of whatever aid it may to this Court. Consent of the attorneys for the parties has been obtained for the submission of this brief and are on file with the clerk of this Court.

Introduction

In this brief we shall attempt to deal with issues which we believe have not been presented as completely as possible to the Court below.

Such issues, as

(a) Whether a labor dispute is involved within the meaning of the Norris-LaGuardia Act,

(b) Whether the Federal Government was acting in sovereign or proprietary capacity,

(c) The relationship of the Krug-Lewis agreement to the prior agreement between the Mine Operators and the United Mine Workers,

(d) The validity of the argument that the restraining order should have been obeyed pending the determination of the issues,

have been and, we feel, will be, adequately presented to the Court.

It is our contention that the statements of the Court below relating to sovereignty and analogies and conclusions drawn therefrom are unsound and violate fundamental tenets of our society and of the Constitution of the United States.

POINT I

The Morris LaGuardia Act deprived the Court below of jurisdiction to issue ex parte the restraining order granted.

A. The Government of the United States is not a government of unlimited powers.

In denying the rule to discharge and vacate the order to show cause in the contempt proceedings, the Court below held that the restraining order was proper because the Federal Government was not bound by the provisions of the Norris-LaGuardia Act (29 U. S. C. A., s. 101 et seq.). In support of this proposition, the Court based upon *Black, Interpretation of Laws,* pp. 94-5, and *Dollar Savings Bank* v. *United States,* 19 Wall. 227 (1873), drew analogies from British constitutional history of the sovereign as *parens patriae.* The conclusion from this analogy was that the Federal Government, the *parens patriae,* was above the statutory law unless specifically named therein.

It is our belief that this analogy, in so far as applicable to the case at bar, is untenable. The constitutional history of England and the United States developed in entirely different conditions and atmospheres.

The history of the English sovereign is one of unlimited power gradually delimited. Until the power of the sovereign is curtailed, its authority in any field is supreme. The Magna Carta is a great historic document for the very reason that it curtailed and set limitations upon the power of the sovereign. English history is replete with such examples. Revolutions were fought and kings' heads rolled in the struggle to delimit and define the sovereign power. The sovereign was above the law unless bound thereby in specific terms.

The American Constitution developed out of just such a struggle to delimit the powers of the English king. With

the history of unbridled sovereignty fresh in its mind, the Constitutional Convention drafted the American Constitution. The Federal Government is granted certain powers only. Whether the Constitution is subject to strict or broad and liberal construction, the Government is, nevertheless, one of limited power. The Tenth Amendment is specific on this point.

The analogy drawn between the American and English sovereign power is, therefore, inaccurate.

B. The Government of the United States, being one of limited powers, is bound by any law applicable to any proceedings and the subject matter thereof whether specifically named or not.

To arrive at any other conclusion, would render meaningless the Tenth Amendment to the Constitution. Except for the specific prohibitions against the exercise of the sovereign power contained in the Constitution, the Government would have unlimited dictatorial power over the people in the absence of specific Acts of Congress to the contrary. All that vast field of human aspiration and endeavor which the Congress has not undertaken to control by legislation, the Government could control by administrative act. The mere statement of such a proposition makes patent its inherent abhorence to the American philosophy of government.

Dollar Savings Bank v. *United States*, 19 Wall. 227 (1873), cited by the Court below as being decisive of the contrary contention, is not in point. It involved a statute which, unlike the Norris-LaGuardia Act, defined the rights of the parties litigant rather than the jurisdiction of the Court as has been presented in the principal brief filed by the petitioners-defendant in the instant case. Furthermore, in that case, the Court itself recognized, at page 240, that its remarks concerning the extent of the sovereign power were *obiter dicta* and "superfluous" to its decision.

C. The inferior Federal courts are statutory and thus subject to the limitations upon its jurisdiction determined by the Congress.

The inferior Federal courts are created by the Congress, pursuant to Article III, s. 1, of the Constitution. They are not self generative but the creatures of statute (28 U. S. C. A., s. 1 et seq.). They came into being because Congress willed it. They have jurisdiction over those matters which Congress has granted to it and no other. As was stated in *Kendall* v. *United States ex rel. Stokes*, 12 Pet. 524, 622 (1838):

> "'The judicial power shall be vested in one Supreme Court, and in such inferior courts as Congress shall, from time to time, ordain or establish.' * * * And as relates to judicial power, the term jurisdiction is not used, until the distribution of those powers among the several courts, is pointed out and defined."

This Court stated in *Cary* v. *Curtis*, 3 How. 236 (1845), at page 245, that:

> "* * * the judicial power of the United States * * * is * * * dependent for its distribution and organization, and for the modes of its exercise, entirely upon the action of Congress, who possess the sole power of creating the tribunals (inferior to the Supreme Court) for the exercise of the judicial power, and of investing them with jurisdiction either limited, concurrent or exclusive, and of withholding jurisdiction from them in the exact degrees and character which to Congress may seem proper for the public good. * * * It follows, then, that the Courts created by statute must look to the statute as the warrant for their authority * * *."

From this it follows that Congress, that branch of the Federal Government to which is delegated the right to bestow power on the courts, can use that same power to define, modify or limit that power. And this, this Court

has held. In *Kline* v. *Burke Construction Co.*, 260 U. S. 226 (1922), the Court stated at page 234:

> "Only the jurisdiction of the Supreme Court is derived directly from the Constitution. Every other court created by the general government derives its jurisdiction wholly from authority of Congress. That body may give, withhold or restrict such jurisdiction at its discretion, provided it be not extended beyond the boundaries fixed by the Constitution. * * * And the jurisdiction having been conferred may, at the will of Congress, be taken away in whole or in part * * *."

From one of the earliest cases before this Court—*Turner* v. *Bank of North America*, 4 Dall. 8, 9-10 (1799)—to the present, it has been consistently recognized that the jurisdiction of the inferior courts was subject to the discretion of Congress.

D. Congress, by the Norris-LaGuardia Act, validly delimited the jurisdiction of the Court to issue restraining orders, irrespective of the parties litigant.

The Act unequivocally states, "No court of the United States * * * shall have jurisdiction to issue any restraining order or temporary or permanent injunction in a case involving or growing out of a labor dispute * * *." It is pointed out and emphasized that this did not deny any substantive right but merely affected and modified a particular remedy—namely, the power of the court in an *ex parte* proceeding to grant an injunction in a labor dispute.

An analogous modification has been upheld by this Court in *Michaelson* v. *United States*, 266 U. S. 42, 65 et seq. (1924), involving the right of a defendant in a contempt proceeding to ask for a jury trial. It was urged that this materially interfered with the inherent power of the court but this Court upheld the right of the Congress to regulate the power granted to the courts. See also *Ex Parte Robinson*, 19 Wall. 505.

Referring to the Norris-LaGuardia Act's limitation on the injunctive power of the court, the Second Circuit Court stated:

> "However, Congress has the power, as now exercised, of withdrawing this jurisdiction from the District Court. Congress may give either whole or restricted jurisdiction at its discretion, provided there is no extension beyond the boundaries fixed by the Constitution. * * * and Congress has the power to regulate the power which it grants * * *." *Levering, etc.*, v. *Morrin*, 2nd C., 71 Fed 2d, 284 (1934), certiorari denied, 293 U. S. 595.

Thus, no Federal District Court has jurisdiction to hear the case at bar and the fact that the United States is a party does not confer such jurisdiction upon it. Otherwise, the Federal District Court, without the benefit of enabling legislation, would be obtaining jurisdiction and power over matters from which Congress has specifically withdrawn whatever jurisdiction it might have had.

The issue that evolves is not whether or not the Federal Government is bound by legislation wherein it is not specifically mentioned but whether or not the Court has the power to issue the restraining order it did. To hold that the United States may seek and obtain the restraining order although the Court is without jurisdiction is to convert the District Court into a Star Chamber. The presence of the United States in the proceedings does not increase the capacity of the Court. The Court could no more issue the order herein than it could do any other act for which legislation had not been enacted granting such power. By granting the restraining order, the Court assumed jurisdiction where it had no jurisdiction.

POINT II

The order adjudging the petitioners in contempt was improperly granted and should be ordered vacated. The Court below erred in denying the motion of petitioners to discharge and vacate the rule to show cause against petitioners and should be reversed.

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